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Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency

*Carol Jacobsen, Kammy Mizga, Lynn D'Orio**

I. INTRODUCTION

The worldwide crisis of violence against women, from intimate relationships to interactions with the state, is a human rights issue of intolerable proportions. According to Amnesty International, 70 percent of female murder victims are killed by their male partners, globally.¹ In response, governments have publicly condemned violence against women, but have failed in substantive ways to show political will to fully address it, provide financial resources to end it, or meet women's needs for alternative strategies and support. Since the site of greatest danger for women is in the home, and the greatest threat is found in their relationships to men, "Amnesty International points to every country in the world for failing to protect women in their own homes."²

In the United States, police encounter more cases of domestic violence each year than all other forms of violence combined. Approximately 85

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1. In March, 2004, Amnesty International launched a global campaign to stop violence against women. Sara Bennett, Amnesty International, Amnesty International Launches Global Campaign To Stop Violence Against Women (2004), <http://www.amnesty.ie/content/view/full/1699>.

2. *Id.*

percent of the victims of partner violence are female.³ At least 1,200 women, or one-third of all female murder victims, are murdered by their male partners each year, while less than 4 percent of all male murder victims are killed by female partners.⁴ Most women who kill do so to defend themselves from men who have repeatedly beaten them.⁵

Despite the very real dangers that many women live with on a daily basis, those who defend themselves against batterers are given no special consideration by the criminal-legal system if they are forced to kill. In fact, there is evidence that such women often face greater punishment than other defendants. A study conducted by The Michigan Battered Women's Clemency Project of homicide convictions and sentences in Oakland County, Michigan, over a three-year period from 1986 to 1988, revealed startling levels of discrimination against defendants who were victims of domestic violence. All of the victims of domestic violence in this study were women. Results showed that domestic violence victims had higher conviction rates and longer sentences than all others charged with homicide, including those with previous violent criminal records. Overall, a white female defendant with no prior convictions or criminal history who was convicted by a jury of killing a white person could expect an average sentence of 10 to 30 years. However, if the woman was a victim of domestic violence, her predicted sentence increased to life.

II. SELF-DEFENSE LAW

In Michigan, the law allows any person to: (1) take a life to defend her or his own life; (2) be judged according to how the circumstances appeared to the person at the time; and (3) be judged according to the person's own honest and reasonable belief that she or he was in danger of being killed, seriously injured or forcibly sexually penetrated.⁶ However, in practice, the right to self-defense is not granted to women in the same way it is granted to men.

Feminist scholars have criticized the inadequacy of the self-defense construct and/or its application to battered women. Cynthia Gillespie notes that the law of self-defense has changed remarkably little since the Middle Ages, although the society it serves has changed dramatically.⁷ She argues

3. CALLIE MARIE RENNISON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE, 1993-2001 (2003), <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf#search=%22intimate%20partner%20violence%201993-2001>.

4. *Id.*; JAMES ALAN FOX & MARIANNE W. ZAWITZ, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE UNITED STATES (2006), <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>.

5. ANGELA BROWNE, WHEN BATTERED WOMEN KILL 10-11 (The Free Press 1987).

6. MICH. STANDARD JURY INSTRUCTIONS 174.11 (1986); *People v. Heflin*, 456 N.W.2d 10, 19 (Mich. 1990); *People v. Tubbs*, 110 N.W. 132, 135-36 (Mich. 1907); MICH. CRIMINAL JURY INSTRUCTIONS 7.15-7.22 (1989).

7. CYNTHIA GILLESPIE, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE,

that self-defense law itself is too narrow and relies on underlying assumptions that defeat women's self-defense claims for two reasons.⁸ First, the law has, over centuries, come to embody the notion of a fair fight between persons of equal size and strength duking it out, which does not allow for situations where a woman uses a weapon to offset a man's overpowering size and strength.⁹ Second, our society's attitudes about women, their proper roles, and the normalization of violence against them, especially within the home, play an important role in the murder convictions of women who acted in self-defense.¹⁰ Elizabeth Comack has proposed replacing the legal term "self-defense" with the more gender-neutral "self-preservation."¹¹ Changing the language, she argues, would introduce "the issue of women's structured inequality into the court's frame of reference."¹²

Cynthia Gillespie discusses three areas of self-defense law that unfairly result in convictions of battered women who kill: (1) the definition of imminence; (2) the rule requiring retreat; and (3) the requirement of proportionality or sufficient seriousness.¹³ The rule of imminence, Gillespie argues, is often strictly applied and means the woman is not entitled to fight back with a weapon until her attacker is actually beating her severely enough to make it clear that he is going to beat her to death or nearly so.¹⁴ By that time, she would be helpless to fight back, but the law does not allow for such considerations.¹⁵ The rule requiring retreat harkens back to what is termed "the castle doctrine," or the old English right to defend one's castle, which is difficult to apply to battered women's cases.¹⁶ In fact, Gillespie states, "[T]he large majority of the cases, where it has been held that one *must* retreat from one's own home, involve defendants who are battered women."¹⁷ The proportionality requirement also defeats women's right to defend themselves, as juries tend to find "excessive force in many situations where a woman uses a weapon against an unarmed man, even when it is hard to imagine what alternative she realistically had."¹⁸

Dr. Charles Ewing's (1990) data on 100 cases of battered women who caused the death of their partners showed that "despite generally abundant evidence that they were severely abused by the men they killed, many if

AND THE LAW 49 (Ohio State University Press 1989).

8. GILLESPIE, *supra* note 7, at 8, 51.

9. *Id.*

10. *Id.* at 8.

11. Elizabeth Comack, *Women Defendants and the "Battered Wife Syndrome": A Plea for the Sociological Imagination*, 11 CROWN COUNSEL'S REV. 5, 10 (1987).

12. *Id.*

13. GILLESPIE, *supra* note 7, at 50.

14. *Id.* at 8.

15. *Id.*

16. *Id.* at 39.

17. *Id.* at 82.

18. *Id.* at 55.

not most of these women are convicted because the circumstances surrounding their homicidal acts do not meet the requirement of current self-defense law”¹⁹ One reason for women’s use of available weapons is that the size difference requires the woman protecting herself to compensate. Elizabeth Leonard and others argue that since men in heterosexual relationships are typically taller and stronger than their female partners, women are merely equalizing the relative strength of men by using a weapon.²⁰ Therefore, appropriately applied, a woman’s use of a weapon should not constitute “excessive force” and the law should include an “equalizer principle.”²¹

Other scholars, including Meda Chesney-Lind and George Fletcher, have pointed out that a battered woman defendant is robbed of a fair trial when a jury is not allowed to give her individual consideration.²² Fletcher, who developed the theory of individualized inquiry in criminal law, advocates “a full consideration of individual differences and capacities” when determining a defendant’s accountability.²³ The argument for individualized treatment reflects a deep tension in criminal law between individualization and legal rules — a tension that has perpetuated the problem of sex discrimination.²⁴ Male strategies of control and battering converge with biased structures and institutional practices to make it difficult, sometimes impossible, for women to escape from abusive relationships, thus perpetuating and legitimizing violence against them in the domestic and criminal justice sphere.²⁵ Meda Chesney-Lind notes that the male model of incarceration emphasizes treating women offenders as though they were men, particularly when the outcome is punitive, in the name of equal justice.²⁶ It is the dark side of the parity model of justice: vengeful equity.²⁷

In 2002, the Michigan Supreme Court revisited the law concerning the use of deadly force in self-defense in *People v. Riddle*.²⁸ The court ruled

19. Charles P. Ewing, *Psychological Self-Defense: A Proposed Justification for Battered Women Who Kill*, 14 LAW AND HUM. BEHAV. 579, 580 (1990), quoted in ELIZABETH DERMODY LEONARD, *CONVICTED SURVIVORS: THE IMPRISONMENT OF BATTERED WOMEN WHO KILL* 27 (SUNY Press 2002).

20. LEONARD, *supra* note 19, at 29.

21. *Id.*

22. Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 639 (1980).

23. GEORGE FLETCHER, *RETHINKING CRIMINAL LAW* 512 (Oxford University Press ed., 2000) (1978), quoted in Schneider, *supra* note 22, at 639.

24. Schneider, *supra* note 22, at 639-40 (applying the theory of individuality to self-defense in battered women’s cases).

25. ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 91-97 (Yale University Press 2000) [hereinafter SCHNEIDER, *BATTERED WOMEN*].

26. Meda Chesney-Lind, *The Forgotten Offender*, 60 CORRECTIONS TODAY 66, 70 (1998).

27. *Id.*

28. *People v. Riddle*, 649 N.W.2d 30 (Mich. 2002).

that one may use deadly force in self-defense if she or he honestly and reasonably believes that she or he is in imminent danger of death or great bodily harm and that deadly force is necessary to prevent such death or great bodily harm.²⁹

The first requirement allows for the person's subjectivity in the honest belief that death or great bodily harm is imminent.³⁰ Gillespie has questioned the "objectively reasonable" expectation, given that the law has historically relied upon the concept of "the reasonable man," and a masculine standard cannot be used to measure a woman's behavior in a battering situation.³¹ In her study of battered women's cases that are being reviewed by the governor for clemency in California, Allison Madden found that in several cases, the full set of circumstances known to the defendant was not taken into account when determining her fear of imminent harm.³² Madden argues that logic and common sense mandate that a jury should be instructed that it may consider evidence of a history of battering when deciding whether a woman had a reasonable fear of imminent harm.³³

The second requirement, that the threat must be imminent, disallows the use of deadly force if the threat is distant or remote.³⁴ Gillespie argues for a more flexible interpretation of imminence than the present interpretation by most courts.³⁵ Instructing a jury that it may consider a history of battering in its decision about a woman's reasonable fear of imminent harm would allow a fair consideration of her subjective experience, intimate knowledge of her assailant, and signs of escalating violence against her in defending herself. Holly Maguigan also notes that the definition of "imminence" is critical to the outcome, and that most state courts are not consistent in their definitions of imminence and immediacy.³⁶ Madden, in pointing out that the definition of imminence is nothing more than a judge-made rule of common law that often protects the batterer, argues that courts should recognize that the policy behind self-defense is also to protect the life of the person who has a reasonable fear of death or serious bodily injury.³⁷ A woman who has a history of abuse may reasonably perceive danger to her life that is not immediate but is

29. *Riddle*, 649 N.W.2d at 38.

30. *Id.*

31. GILLESPIE, *supra* note 7, at 93-156.

32. Alison M. Madden, *Clemency for Battered Women Who Kill Their Abusers: Finding a Just Forum*, 4 HASTINGS WOMEN'S L.J. 1, 28-29 (1993).

33. *Id.*

34. *Riddle*, 649 N.W.2d at 40.

35. GILLESPIE, *supra* note 7, at 185.

36. Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 414 n.119 (1991). The Oxford English Dictionary defines "imminent" as "impending threateningly." OXFORD ENGLISH DICTIONARY 685 (2d ed. 1989).

37. Madden, *supra* note 32, at 32.

nonetheless imminent.³⁸

The third requirement of Michigan self-defense law is that the perceived harm must be one of death or great bodily harm.³⁹ This rule often rests on the assumption that two adversaries are equal in size, strength and physical training.⁴⁰ A battered woman who has tried to defend herself with only her own strength may well know that her efforts trigger greater violence against her. As a result, many women use guns, knives or household items to protect themselves. In many cases, failure to fully present this instruction has unjustly affected women's trials in Michigan, including that of Stacy Barker, one of the cases in the present study in Oakland County.

In *People v. Barker*, the Michigan Supreme Court held that a reasonable and honest fear of forced sexual penetration justifies the use of deadly force in self-defense.⁴¹ The ruling was based on the case of Stacy Barker, whose trial judge refused to give the proper instructions to the jury.⁴² Barker was found guilty of first-degree murder and sentenced to mandatory life in prison.⁴³ She stabbed a male acquaintance with his own paring knife as he was assaulting her.⁴⁴ On appeal, the Michigan Supreme Court upheld the first-degree murder conviction and determined that the failure of the trial court to give the instruction to the jury was an error, but a "harmless error."⁴⁵ The court's decision was based on the determination that the defendant used excessive force in stabbing her attacker thirty-two times.⁴⁶ Barker's attacker was a six-foot, two-hundred-pound, white, Lutheran minister who was entirely mobile; she was a black 20-year-old aide, working at the retirement center where he resided.⁴⁷ He attacked her in his apartment.⁴⁸ After a prolonged struggle to escape, during which he tore her clothes, dropped his pants and wrestled her to the floor, Barker grabbed a paring knife from his counter in self-defense.⁴⁹ Only a few years before, she was gang-raped, and she desperately did not want to be raped again.⁵⁰

38. Madden, *supra* note 32, at 32.

39. Riddle, 649 N.W.2d at 30.

40. GILLESPIE, *supra* note 7, at 8, 51.

41. *People v. Barker*, 468 N.W.2d 492, 493 (Mich. 1991), *habeas corpus relief granted on other grounds sub nom. Barker v. Yukins*, 199 F.3d 867 (6th Cir. 1999).

42. *Id.*

43. *Id.*

44. *Yukins*, 199 F.3d at 869.

45. *Barker*, 468 N.W.2d at 493.

46. *Id.*

47. *Id.*; Interviews with Stacy Barker, in Plymouth, Mich. (Jan. 1990; Sept. 1992); Videotape: 3 On a Life Sentence (Carol Jacobsen 1998) (on file with author).

48. *Barker*, 468 N.W.2d at 493.

49. *Id.*; Interviews with Stacy Barker, *supra* note 47; 3 On a Life Sentence, *supra* note 47.

50. *Barker*, 468 N.W.2d at 493; Interviews with Stacy Barker, *supra* note 47; 3 On a Life Sentence, *supra* note 47.

The fourth requirement of the Michigan Supreme Court decision in the *Riddle* case emphasized “that the touchstone of *any* claim of self-defense, as a justification for homicide, is necessity.”⁵¹ Necessity implies a duty to retreat before using deadly force in self-defense. Therefore, the known opportunity for safe retreat is one factor the jury should normally consider in deciding if the killing was necessary. However, *Riddle* discusses three exceptions to the general rule implying a duty to retreat.⁵² First, one is not required to retreat from a sudden, violent attack.⁵³ Second, one is not required to retreat when one is involved in non-deadly combat that escalates into a deadly confrontation that occurs outside of her or his own dwelling.⁵⁴ Third, one is not required to retreat from one’s own dwelling and its attached appurtenances (although this does not extend to the yard).⁵⁵ Since this duty to retreat does not apply to one’s own dwelling, it would seem that the lingering power of the question “why didn’t she leave?” attests to the failure of courts and other public institutions to make this legal point widely understood.⁵⁶ Such a question also ignores the large body of evidence showing that women are in the greatest danger when trying to leave.⁵⁷

While the burden of proof in Michigan law does not require the defendant to prove that she or he acted in self-defense, the law does require that the defendant have a reasonable belief in the necessity to act.⁵⁸ Because this requirement is too often misunderstood in court, Allison Madden argues that a judge should instruct a jury that it may consider the full set of circumstances known to a battered woman, including the history of battering, when deciding whether a woman was reasonable to fear imminent harm and to feel the necessity to act.⁵⁹

51. *Riddle*, 649 N.W.2d at 39.

52. *Id.* at 35.

53. *Id.*

54. *Id.*

55. *Id.*

56. BROWNE, *supra* note 5, at 113.

57. *Id.* at 113-22; see also PATRICIA GAGNE, *BATTERED WOMEN’S JUSTICE: THE MOVEMENT FOR CLEMENCY AND THE POLITICS OF SELF-DEFENSE* 23-29 (Twayne Publishers 1998). In a case in this study, Judge Norman Lippitt, who recognized the error in his handling of the case too late, stated, “Considering everything I have said, my sympathy and sympathy for the family, for the victim and considering what I believe is genuine remorse on your part, I must tell you that the proper option in the situation that you found yourself in would have been to seek a separation or divorce.” Transcript of Jury Trial at vol. 8, 18-19, *People v. Kantzler*, No. 87-78545-FC (Mich. 6th. Cir. Ct. 1988). Judge Lippitt later recognized his mistake and has, since 1993, continued to advocate vigorously for Karen Kantzler’s release. See Letter from Normal L. Lippitt, Judge of the 6th Circuit of the State of Michigan, to Jennifer M. Granholm, Governor of the State of Michigan (Dec. 15, 2003) (on file with author). However, she remains in prison.

58. *Riddle*, 649 N.W.2d at 36.

59. Madden, *supra* note 32, at 28.

III. BATTERED WOMAN'S SYNDROME

Battered woman's syndrome was first identified by Lenore Walker, a forensic psychologist, in her 1979 book, *The Battered Woman*.⁶⁰ According to Walker, a battered woman is "a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights."⁶¹ The battered woman's syndrome refers to characteristics that purportedly appear in women who have been physically and psychologically abused by their husbands or partners.⁶² Walker described a pattern of cyclical abuse consisting of three recurrent phases: (1) a tension building stage, characterized by minor abuse; (2) an acute battering stage, characterized by uncontrollable explosions of brutal violence; and (3) a loving, respite stage, characterized by the batterer's calm and loving behavior and pleas for forgiveness.⁶³ The continued cycle of violence and contrition is said to result in a state of learned helplessness by the battered woman.⁶⁴ An abused woman, living with constant fear and a perceived inability to escape, eventually comes to believe that her only options are enduring the abuse or death.⁶⁵ The concept of "learned helplessness" has been used to explain why some battered women might not leave an abusive relationship.⁶⁶

Walker's theories have been criticized for pathologizing women and implying that battered women suffer from mental illness.⁶⁷ The notion of learned helplessness may also engender stereotypical ideas of a battered woman, which are then used to exclude those women who perform competently in other areas of their lives.⁶⁸ Patricia Gagne notes that to

60. LENORE E. WALKER, *THE BATTERED WOMAN* (Harper & Row 1979).

61. *Id.* at xv.

62. *Id.* at 31-35.

63. *Id.* at 56-70.

64. *Id.* at 45-51.

65. *Id.*

66. Sharon Allard, *Rethinking the Battered Woman Syndrome: A Black Feminist Perspective*, 1 UCLA WOMEN'S L. J. 191, 192 (1991); see also WALKER, *supra* note 60, at 16. Walker's early research on battered women was later expanded to include the psychological reactions to long-term abuse exhibited by hostages, prisoners of war, and victims of terrorism. One of these, the "Stockholm Syndrome," was first formulated by psychologists following the 1973 bank robbery in Stockholm in which four people who were held in a bank vault for four days became attached to their captors. Characteristic of symptoms for the syndrome include identification by the captives with their captors as a defense or survival mechanism, the fear that the captives may also be hurt by rescuers, and empathy for the captors as human beings with problems, grievances, and a point of view. The theory explains that captives who feel in danger and who do not believe they can escape a situation unharmed will, as a means of survival, begin thinking in ways that seem incompatible with their situation, but which, when more closely examined, are actually emotionally and physically safer for them, because they are not antagonizing their captors.

67. See Allard, *supra* note 66, at 206.

68. Madden, *supra* note 32, at 48-49; SCHNEIDER, *BATTERED WOMEN*, *supra* note 25, at 120; GILLESPIE, *supra* note 7, at 180.

fully comprehend battered woman syndrome, and why women stay in relationships with abusers, we must examine gender inequality in our society.⁶⁹ In fact, battered women use many strategies for their own survival, from placating their abusers to fighting back, and from efforts to stop the abuse and calling the police to leaving.⁷⁰ However, the lack of support from law enforcement, social services, and the medical establishment tend to converge with society's predisposition to blame battered women for their own abuse.⁷¹

Walker's theory has also been challenged by feminists, such as Sharon Allard, on the grounds that it cannot fairly apply to non-white women.⁷² Allard points to pervasive stereotypes, reinforced by the media, that black women are domineering, sexually aggressive, assertive, hostile, immoral, and physically stronger than white women.⁷³ These characteristics make it difficult for judges and juries to attribute black women's acts of self-defense to the "learned helplessness" associated with battered woman's syndrome.⁷⁴

It was not until 1992, in *People v. Wilson*, that the Michigan Court of Appeals held that expert testimony on battered woman's syndrome would be allowed at trial.⁷⁵ However, this and similar laws in other states do not constitute a "defense" at trial.⁷⁶ What has been misunderstood as "battered woman's defense" is really an expansion of self-defense law to permit expert testimony and evidence of abuse at trial.⁷⁷ In *People v. Wilson*, the Michigan Court of Appeals held that in a homicide trial where self-defense is claimed by a victim of battering, an expert may testify concerning "the battered spouse syndrome," the symptoms that manifest it, and whether behavior of the defendant is characteristic of "battered spouse" victims generally.⁷⁸ It is the defense attorney's job to show how this evidence fits into a claim of self-defense and to argue the reasonableness of the woman's actions.⁷⁹

However, an astonishing number of battered women receive ineffective, even incompetent, legal counsel who are unprepared to link abuse to defense theories.⁸⁰ Unlike many states where expert testimony

69. GAGNE, *supra* note 57, at 18.

70. See SCHNEIDER, BATTERED WOMEN, *supra* note 25, at 120.

71. *Id.* at 12; GILLESPIE, *supra* note 7, at 11-12; see generally Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999).

72. Allard, *supra* note 66, at 200-06.

73. *Id.*

74. See *id.*

75. *People v. Wilson*, 487 N.W.2d 822, 825 (Mich. Ct. App. 1992).

76. Gail Rodwan & Jeanice Dagher-Margosian, *Michigan Recognizes Battered Spouse Syndrome*, 72 MICH. BAR J. 82, 82 (1993).

77. *Id.* at 80, 114.

78. *Wilson*, 487 N.W.2d at 825.

79. See *id.*

80. Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants:*

and evidence of battering are permitted, experts testifying in Michigan are precluded from giving an opinion about whether a particular defendant was suffering from battered woman's syndrome.⁸¹ Lenore Walker, who testified for the defense in the trial of Nancy Seaman, noted that she was surprised by this restriction in Michigan law, which she had not encountered in the hundreds of trials in which she had testified in other states.⁸² In 2004, Nancy Seaman was convicted in Oakland County Circuit Court of first-degree murder in the death of her abusive husband.⁸³ On the day the verdict was read, one juror stated, "She was not a meek, howling woman waiting for the next beating."⁸⁴ And at sentencing, the trial judge said that although he believed she was an abused wife, she could use that experience to help other women while she lives out her life in prison: "The lesson you have to teach is to get help and to get out."⁸⁵

In a 1991 survey of 223 appellate cases in homicide convictions of battered women in California, Holly Maguigan argued that the law of self-defense itself is adequate to support battered women defendants, but the major obstacle to due process is that judges, vested with the power to make credibility determinations on the sufficiency of defense evidence, unjustly apply the law and essentially deny battered women fair trials.⁸⁶ Judges implement their bias through the exclusion of evidence, the denial of self-defense instructions, and/or the repudiation of instructions to the jury on the relevance of a battered woman's evidence.⁸⁷ Sue Osthoff, cofounder and executive director of the National Clearinghouse for the Defense of Battered Women, contends that judges, prosecutors, defense attorneys, and jurors, all bring myths and stereotypes about battered women to any trial that are used to exclude individual women.⁸⁸ The use of "syndrome" terminology, she states, often shifts the focus away from "Did she act in self-defense?" to "Does she truly have 'battered woman's syndrome?'"⁸⁹

Maguigan's survey found that the rules outlining when a woman is entitled to a self-defense instruction are "the single most important

A Normative Construct, 26 HARV. WOMEN'S L.J. 217, 218 (2003).

81. *Wilson*, 487 N.W.2d at 825.

82. *Expert: Teacher Who Killed Husband Was 'Battered Woman,'* LOCAL 4, Dec. 10, 2004, <http://www.clickondetroit.com/news/3988956/detail.html>.

83. *Teacher Found Guilty of Hacking Husband to Death*, LOCAL 4, Dec. 14, 2004, <http://www.clickondetroit.com/news/3996717/detail.html>.

84. *Seaman Jury Rejects Battered Wife Claim*, DETROIT FREE PRESS, Dec. 15, 2004, at 1A.

85. *Woman is Defiant as She's Sentenced to Life*, DETROIT FREE PRESS, Jan. 25, 2005.

86. Maguigan, *supra* note 36, at 383, 440.

87. *Id.* at 439-40.

88. NAT'L CLEARINGHOUSE FOR THE DEF. OF BATTERED WOMEN, ADDRESSING A NATIONAL ISSUE: JUSTICE FOR WOMEN WHO FIGHT BACK: SOME THOUGHTS AND QUESTIONS 3 (1999).

89. *Id.*

determinant of a defendant's ability to get an instruction on self-defense."⁹⁰ In many cases, battered women were not able to assert self-defense at all because of the trial courts' refusals to apply battered women's use of deadly force as reasonable under established legal definitions.⁹¹ Maguigan also exposes the incorrect assumption that most women kill when the abuser is asleep or during a lull in the violence. Instead, she found that most kill in confrontational situations: 75 percent involved confrontations; 20 percent were non-confrontational cases; 8 percent consisted of sleeping-man cases; and 8 percent of cases involved the defendant as aggressor during a lull in the violence; the remaining 5 percent did not discuss the facts.⁹² Maguigan's position is that *any* evidence coming from any source should satisfy the requirement for a full instruction on self-defense, and that includes instructing the jury on the relevance of that evidence.⁹³

In her critique of the inadequacy of the self-defense construct and/or its application to battered women, Gillespie points to the high rate of convictions in battered women's cases.⁹⁴ She argues that this is often the result in cases where prosecutors have trotted out every "myth and stereotype and misconception about women that could conceivably inflame a jury against the defendant," knowing that they could get juries to convict women who don't fit the stereotype.⁹⁵ Allison Madden notes that prosecutors often initiate the inequity at the time they file charges since that decision represents a conclusion that a woman who killed her batterer acted with intent and may ignore evidence favoring a reduced sentence or a finding of self-defense.⁹⁶ Mary Ann Dutton, a forensic psychologist, argues that neither "battered woman's syndrome" nor post traumatic stress disorder, a psychological category that encompasses battered woman's syndrome, adequately covers the breadth of knowledge developed over the past several decades about battering and its effects on women.⁹⁷ Dutton further argues that these terms tend to exclude women who do not seem to suffer from these "disorders," but did act in self-defense.⁹⁸ Elizabeth Schneider summarizes the problem of battered woman's syndrome as

90. Maguigan, *supra* note 36, at 439.

91. *Id.* at 436-37.

92. *Id.* at 382, 397; CHARLES PATRICK EWING, *BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION* 42 (Lexington Books 1987); BROWNE, *supra* note 5, at 163-64.

93. Maguigan, *supra* note 36, at 383, 439-42.

94. GILLESPIE, *supra* note 7, at xi.

95. *Id.* at 22.

96. Madden, *supra* note 32, at 34-35.

97. Mary Ann Dutton, *The Validity of 'Battered Woman Syndrome' in Criminal Cases Involving Battered Women* 17-19 (Malcolm Gordon ed.), in U.S. DEP'T OF JUSTICE, *THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: REPORT RESPONDING TO SECTION 40507 OF THE VIOLENCE AGAINST WOMEN ACT* (1996).

98. *Id.*

relying on stereotypes of femininity that harm women who are too assertive, aggressive, or insufficiently remorseful, and racial stereotypes that produce special hurdles for women of color, thus rendering most women unable to fit the definition.⁹⁹ She argues further that it is important to challenge the concept of reasonableness due to continuing public resistance to the concept of a woman's reasonableness.¹⁰⁰ In a comprehensive analysis of the failure of the American criminal-legal profession with regard to cases involving battered women defendants, Sarah M. Buel offers a framework for lawyers and judges handling these cases in the future.¹⁰¹

IV. OAKLAND COUNTY STUDY

The present study of homicide convictions and sentences in Oakland County, Michigan cover a three-year period from 1986 to 1988, inclusive. The study was conducted by the Michigan Battered Women's Clemency Project to determine whether, and if so, how, gender bias in Michigan courts in one urban county has affected the outcome of battered women's trials.¹⁰² Only homicide cases that occurred and were disposed of within

99. SCHNEIDER, BATTERED WOMEN, *supra* note 25, at 82-83.

100. *Id.*

101. *See generally*, Buel, *supra* note 80.

102. The Michigan Battered Women's Clemency Project was founded in 1991 by activist and former prisoner Susan Fair. Coordinators of the Project estimate that, of the approximately 340 women currently serving time in Michigan prisons for Murder I, II, and felony murder, perhaps half may be battered women who acted in self-defense. By 2004, the Project had reviewed well over 100 cases, and directly represented 27 battered women, most of whose cases were oldest and had life or long-term sentences, and had worked with dozens more in various ways, including challenging the four point chaining in segregation and other forms of torture practiced by the Michigan Department of Corrections in the women's prisons. In the past decade, Michigan's women's prisons have been the subject of investigations by Amnesty International USA, Human Rights Watch, the U.S. Justice Department, and other organizations because of the rampant sexual assaults and harassment by male guards, the medical neglect, and other abuses of female inmates. *See* AMNESTY INTERNATIONAL, UNITED STATES OF AMERICA RIGHTS FOR ALL: "NOT PART OF MY SENTENCE" VIOLATIONS OF THE HUMAN RIGHTS OF WOMEN IN CUSTODY (1999); HUMAN RIGHTS WATCH, NOWHERE TO HIDE: RETALIATION AGAINST WOMEN IN MICHIGAN STATE PRISONS (1998). Twenty-six of the women in the Project were directly represented through clemency petitions to the governor, and others through motions and/or appeals in court (several through both petitions and court), and still others through support for parole, demands for human rights, and other efforts. The waiting list continues to grow as more women self-identify. Most of the petitions for clemency were rewritten and resubmitted one or more times. All but one woman had served over ten years and some over twenty, two over thirty. All petitions submitted to Governor Engler (Michigan Governor from 1990-2002) were denied with no reason given. Twenty petitions submitted to Governor Granholm in 2003 were denied all at once in 2006 with letters that read, "This office is not persuaded that the arguments presented in your application are compelling enough to overcome the great weight of your [plea/conviction]" Between 1998 and 1999, the Project succeeded in freeing two women from life sentences through Motions for Relief from Judgment. Each woman had served approximately twenty years. Three more women were released on parole whose petitions had been filed by the Clemency Project. Motions

the three-year period were studied. This period was selected because it included at least one of the cases currently represented by the Clemency Project.

Oakland County, located in southeast Michigan and adjacent on the north to Detroit, is one of the largest counties in the state. Its population in 2000 was 1.1 million (the state population was just under 10 million), 10 percent of whom had moved to Oakland County in the past decade.¹⁰³ Racially, Oakland County differs from Detroit and the rest of Michigan, with 82.8 percent of its population white (compared to 80.2 percent for the state, and 12.3 percent for Detroit) and 10 percent black (compared to 14.2 percent for the state, and 81.6 percent for Detroit).¹⁰⁴ This racial composition hints at another difference between Oakland and Detroit, as well as with the rest of the state. While the median household income in Oakland County in 1989 was \$43,407, neighboring Wayne County, within which Detroit lies, had a median household income of only \$27,997.¹⁰⁵

for Relief from Judgment filed in two more cases were denied in 2003. Over the past decade, two women died whose petitions had been filed by the Clemency Project, one woman on the waiting list committed suicide, and several on the waiting list were paroled after serving lengthy sentences. For the first person stories and social critiques by some of the women in the Michigan Battered Women's Clemency Project, *see* Videotape: From One Prison . . . (Carol Jacobsen 1994) (on file with author); *see also* Videotape: Clemency (Carol Jacobsen 1997) (on file with author); *see also* Videotape: Segregation Unit (Carol Jacobsen 2000) (on file with author); *see also* Michigan Battered Women's Clemency Project, Women's Stories, <http://www.umich.edu/~clemency> (last visited October 12, 2006).

103. U.S. Census Bureau, Fact Sheet: Oakland County, Michigan, http://factfinder.census.gov/servlet/SAFFacts?_event=&geo_id=05000US26125&_geoContext=01000US%7C04000US26%7C05000US26125&_street=&_county=oakland&_cityTown=oakland&_state=04000US26&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=050&_submenuId=factsheet_1&ds_name=ACS_2005_SAFF (last visited Sept. 27, 2006);

104. *Id.*; U.S. Census Bureau, Fact Sheet: Detroit City, Michigan, http://factfinder.census.gov/servlet/SAFFacts?_event=ChangeGeoContext&geo_id=16000US2622000&_geoContext=01000US%7C04000US26%7C05000US26125&_street=&_county=detroit&_cityTown=detroit&_state=04000US26&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=010&_submenuId=factsheet_1&ds_name=DEC_2000_SAFF (last visited Sept. 27, 2006); U.S. Census Bureau, Fact Sheet: Michigan, http://factfinder.census.gov/servlet/SAFFacts?_event=&geo_id=04000US26&_geoContext=01000US%7C04000US26%7C05000US26125&_street=&_county=oakland&_cityTown=oakland&_state=04000US26&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=050&_submenuId=factsheet_1&ds_name=DEC_2000_SAFF (last visited Sept. 27, 2006).

105. U.S. Census Bureau, Median Household Income by County: 1969, 1979, 1989 (2004), <http://www.census.gov/hhes/income/histinc/county/county1.html>. Economic information is relevant although the police records do not have any information about the defendant's income levels. As an alternative proxy, where available, we collected information about whether the defendant used a court appointed public defender or retained a private attorney. The results do not change whether or not we include this variable.

A. METHODOLOGY

There were 18,242 felony cases in Oakland County during the years 1986, 1987, and 1988. However, the Oakland County Circuit Court's coding system did not differentiate homicides from other felonies. The Michigan State Police provided documentation for a total of 129 homicides for those three years, but there was no compilation of homicides by defendant or victim name, nor was any other crime reporting compilation required under state or federal law.¹⁰⁶

Since neither the Oakland County Clerk's Office, the Prosecutor's office, the Sheriff's Department, nor the Michigan State Police could provide a list of the names of all 129 defendants in the homicide cases, a list of the 57 law enforcement jurisdictions within Oakland County was obtained from the local battered women's shelter. Freedom of Information Act (FOIA) requests were made to each of the 57 law enforcement jurisdictions, requesting the incident reports of all homicides, the full names of suspects, and the number of homicides occurring within the jurisdiction for the respective years. This method was highly successful as all of the 129 homicide cases were accounted for.

The police reports were obtained to compile demographic information, including the race, sex, and age of each defendant and victim. Information as to whether there was a relationship between the defendant and the victim and the nature of that relationship were also collected. File numbers were obtained by using the name of the suspect or defendant. Original court files were pulled for each homicide in order to obtain sentencing and conviction information and to fill in any missing relationship or demographic information. Additionally, more specific FOIA requests were made to individual law enforcement jurisdictions to obtain any data that could not be found from the original FOIA requests, police reports, or court files. FOIA requests were also sent to the Oakland County Probation Office to obtain sentencing guidelines for those that were not present in the court file.

Cases of manslaughter involving motor vehicles or the negligent use of motor vehicles were eliminated from the study. After the cases were eliminated, 82 cases remained: 14 with female defendants and 68 with male defendants. The data set was then subjected to multivariate tests, including

106. Because Oakland County Circuit Court records from the relevant years do not distinguish homicide cases from all other felony cases (approximately 18,000 total for those years), it was necessary to make 42 individual FOIA requests, from each law enforcement jurisdiction, for police reports for all homicides within their jurisdiction for the years 1987, 1987, 1988. A list of these jurisdictions was obtained through assistance from the Oakland County battered women's shelter. Police reports gave information, such as name and race, that was not always included in the court file. This made it possible to get the case number from circuit court computers if charges were filed, and pull the court file for conviction and sentencing information.

controlling for race, sex, age, prior convictions, and whether the defendant had a private attorney (an imperfect indicator of economic status, but the only data available). Information gathered for statistical comparison included: sex, age, race, and socioeconomic status of both the defendant and victim; whether there was a prior relationship between the parties, whether it was intimate, and whether it involved domestic violence; whether the defendant had a prior criminal record, a summary of the offense, what the defendant was charged with, whether the charges were amended, case disposition, including whether there was a conviction, what the conviction was, whether there was acquittal or plea taken, whether it was a bench or jury trial, and whether sentencing was within the guidelines.¹⁰⁷

B. SAMPLE

The sample included 82 homicide cases that occurred and were disposed of in Oakland County during the years 1986, 1987, and 1988. Among the defendants, 50 percent were non-white and 17 percent were women. Among the 64.2 percent of defendants who were convicted, 41 percent were convicted of first-degree murder and 17 percent of those convicted had sentences that exceeded the guidelines. All of the defendants who were victims of domestic violence were women, and 64.29 percent (9 out of 14) of the women defendants were victims of domestic violence.¹⁰⁸

C. ON CONVICTION

The results show that 71.43 percent of women were convicted, while only 62.69 percent of men were convicted. Among the women who were black, 80 percent were convicted, compared to only 61.97 percent for the rest of the sample. If the homicide victim was white, 78.95 percent of those defendants were convicted as opposed to only 51.16 percent otherwise. If there were *intimate relations between defendant and victim*, 83.33 percent were convicted compared to 60.87 percent otherwise. If the *defendant was a victim of domestic violence*, 77.78 percent were convicted, compared to only 62.50 percent otherwise. In cases where the defendant killed her batterer, the conviction rate was 71.43 percent compared to 63.51 percent in other cases.¹⁰⁹ In multivariate tests, assuming the defendant was a white female with no prior convictions accused of killing a white person, and given a jury trial, if there were *intimate relations between the defendant and victim*, the probability of conviction increases from 83.24

107. The methodology was devised and the data was collected by Kammy Mizga, Coordinating Attorney with the Michigan Battered Women's Clemency Project. Irfan Norruddin performed the statistical analysis from the data.

108. See fig. 1.

109. See fig. 2.

percent to 96.7 percent.¹¹⁰ If the *defendant was a victim of domestic violence* (all victims of domestic violence were women), the probability of conviction increases from 78.52 percent to 97.68 percent.¹¹¹ Judges in the study were harsher on defendants than juries. Bench trials were more likely to result in first-degree murder convictions (61.54 percent) than jury trials (38.24 percent).

Results of the study support the conclusion of the 1989 Michigan Supreme Court Task Force Report on Gender Issues in the Courts:

Women defendants in victim-precipitated homicides may be treated unfairly by the criminal justice system due to gender-based attitudes and a lack of understanding of the effects of prolonged abuse. Primarily, they may be blamed for not leaving their home or the relationship before the killing occurred The past violent acts and reputation for cruelty and violence of the decedent, and the defendant having no duty to retreat from her own home in the face of an attack, are legal issues which are not consistently raised, developed, or admitted in these cases. In some cases, the proper jury instructions as to these legal rules may not be given or requested.¹¹²

D. ON SENTENCING

In multivariate tests¹¹³ for a white female defendant with no prior convictions found guilty by a jury of killing a white person, the predicted sentence, if there was no domestic violence, was 10 to 30 years. However, if the *defendant was a victim of domestic violence*, the predicted sentence increased to life.¹¹⁴ Because the conviction rate was higher for victims of domestic violence, all of whom were women, the average sentences were longer for them than for all others, including batterers and men with criminal histories.

110. These results are within an 88 percent confidence interval.

111. See fig. 3. These results are within an 84 percent confidence interval.

112. MICH. SUP. CT., FINAL REPORT OF THE MICHIGAN SUPREME COURT TASK FORCE ON GENDER ISSUES IN THE COURTS 39 (1989).

113. Using an ordered probit analysis with a four-category dependent variable (Sentence 1). Results are within a 90 percent confidence interval.

114. See fig. 4; Citizens Alliance of Prisons and Public Spending, Sentencing and Parole: The Michigan System, <http://www.capps-mi.org/sentencing%20and%20parole.htm> (last visited Sept. 27, 2006). Mandatory life means a life sentence without possibility of parole, and is the mandatory sentence for conviction of Murder I. A life sentence with a possibility of parole, or a term of years may be given for a conviction of Murder II. However, the proportion of paroles granted in Michigan declined from 68 percent in 1990 to 48 percent in 2002 overall, and for women the numbers of paroles granted have been very few. The reality is that any life sentence may mean just that.

V. CASE SUMMARIES

Among the 82 cases in the study, 68 of the defendants were male while 14 were female, and 49 of the victims were male while 18 were female. The following are summaries of some of these cases.¹¹⁵ The summaries give more detail about women who died at the hands of batterers or who were convicted despite defending themselves against a batterer or rapist. It is also instructive to compare the contexts and available details of cases involving women in contrast to those involving men.

A. ARE MEN WHO KILL BATTERERS HEROES?

There were two cases in the sample in which men intervened on behalf of battered women and actually killed the women's abusers. One man was acquitted and one received 7 to 25 years, far less than the life sentence that women who killed batterers themselves could expect.

Floyd Anthony Frick, 30, was acquitted of second-degree murder and felony firearm charges after he shot and killed his girlfriend's unarmed ex-husband as he walked towards Frick. Both men were white. Despite a permanent injunction against him, Michael Stokes, 37, showed up at the defendant's home, where Stokes' ex-wife also resided. Stokes threatened and assaulted his ex-wife in the driveway. Frick did not call police or retreat with his girlfriend into their home. Instead, Frick walked into the house and got a shotgun. Frick came out of the house and told Stokes to leave. Stokes refused to leave, approached Frick, and allegedly grabbed for the gun. The gun "went off," killing Stokes. At a jury trial, Frick's motion for a directed verdict at the close of the prosecutor's case was granted, and he was acquitted.

Glenn William Johnson, 46, was having drinks with a woman at a bar. The woman's ex-husband, 47, was stalking her. He followed the couple and threatened to kill Johnson. Instead, the defendant killed the ex-husband and claimed self-defense. Both men were white. The defendant was charged with open murder and was found guilty of second-degree murder at a bench trial. He was sentenced to 7 to 25 years; he served nine.

Since there were only two cases in this category, it is not possible to draw a statistically relevant comparison between the categories of women who kill their batterers and men who kill the women's batterers. However, it is noteworthy that even though victims of domestic violence are far more likely to be convicted and sentenced to life than other homicide defendants, in the two cases where men killed batterers on behalf of women, one was acquitted and the other received a relatively low sentence. This suggests an

115. The purpose of including these summaries is to give the reader an idea of what the cases actually look like. Summaries of all the cases are not included. Only those cases that represent certain categories, or show particular points that the numbers alone could not represent are discussed.

acceptance of the male right to defend himself and others, and the social expectation that a man should protect a woman.

B. WOMEN WHO KILL TO PROTECT A CHILD

Edna Hollis, 39, shot her husband, Mark Hollis, while he was in bed. He had sexually abused her daughter. She was charged with first-degree murder; a jury convicted her of second-degree murder and sentenced her to 15 to 40 years. Both the defendant and the victim were black.

The sentence in this case, involving a woman who killed in defense of her child, was longer than both of the two cases where men killed to protect women. However, the sentence is less than the average for women who killed in self-defense, illustrating how society offers more sympathy when a woman is protecting her child than when she is protecting herself.

C. BATTERERS WHO KILLED WIVES

There were six batterers who killed in this study; two cases are summarized here. Two of the six defendants were men who killed their wives or girlfriends over another man, two committed double murders, and two killed their victim and then killed themselves. The average actual time served by batterers who killed their female partners, not including the double murderers and the one who died in prison, was less than 4 years.

Alvie R. Randall, 56, killed his wife, Bobbie, in a "domestic dispute." Both were black. He had a prior criminal record. He was convicted of involuntary manslaughter in a bench trial and sentenced to 10 to 15 years. He served less than two years.

John Curran strangled his wife, Adelaide. Both were white and in their twenties. He pled guilty to voluntary manslaughter and was sentenced to 6 to 15 years. He served nine years.

D. WIVES WHO KILLED THEIR BATTERERS

In two cases where women killed their long-term batterers, both acted in self-defense during face-to-face struggles for their lives. One received a life sentence for a second-degree murder conviction, and the other was convicted of voluntary manslaughter and sentenced to 5 to 15 years, which was within the sentencing guidelines for the conviction. The average of these two sentences is far longer than the average for batterers who killed their wives. Like the other two women in the study who claimed self-defense, these women also served more time than men who claimed self-defense.

Karen Kantzler, 36, whose case is examined in detail later, killed her violent, abusive husband in a struggle over a gun. Both were white. He was a medical doctor who beat her, broke her ribs, tried to drown her, held guns to her head, repeatedly degraded her, and threatened her life. He had been sued twice by others for assault. She was convicted of second-degree

murder by a jury and sentenced to life. She remains in prison.

Yvette Simone Powell, 20, stabbed and killed her husband, James Keenan Powell, during a fight. Both were black. He choked and kicked her, and pulled her by the hair. She got loose and grabbed a knife and ran to the bedroom. He was in the bathroom with the door locked. When he opened the door, she stuck the knife in and did not realize he had been stabbed until he yelled and told her to drive him to the hospital. She had multiple bruises. Police found many holes punched in the drywall of the house. She was charged with open murder and a jury convicted her of voluntary manslaughter. She was sentenced to 5 to 15 years. She served six years.

E. MEN WHO KILLED IN SELF-DEFENSE

Self-defense laws served male defendants much better than female defendants in the study. Women served more than twice as much time as men in this category. In these cases, the defendants and victims were friends or acquaintances.

Vincent Smith, 39, was high on cocaine and alcohol at the house of his friend, Keith Roderick Alford. Alford ordered Smith to leave, but Smith refused and began beating Alford. Alford claimed self-defense, and claimed he had no duty to retreat in his own house. Alford shot Smith at close range. Alford was acquitted in a jury trial.

Mitchell Ambris, 58, killed Richard Stephen Pearce, 37, in a confrontation regarding a debt. The victim aggressed, and Ambris claimed he acted in self-defense. The defendant was convicted of second-degree murder and sentenced to life with the possibility of parole. He died in prison after six years.

David Howard Parker, 25, was acquitted of open murder and two counts of possession of a firearm (felony firearm) in the commission of a felony. The case involved a fight in a parking lot over who was going to give a woman a ride home from a bar. After firing shots in the air to break up a fight between the victim and the defendant's friend, the defendant shot and killed the unarmed victim as he and his friends approached the defendant. Both the defendant and victim were white. A jury found the defendant not guilty on all counts.

F. WOMEN WHO KILLED IN SELF-DEFENSE

Juries convicted two women who killed their rapists in self-defense in this study, and judges gave them long sentences.

Stacy Barker, whose case was summarized earlier, was convicted by a jury of first-degree murder and sentenced to life without parole. She remains in prison. Although her case changed Michigan law after her trial (if requested by the defense, a judge is now required to give instructions to a jury that a woman has a lawful right to use deadly force to prevent a

sexual assault), the new law did not affect Stacy Barker's case.¹¹⁶

Maha Kouza was a 23-year-old immigrant from Iraq. She lived with her mother and worked as a cashier in a grocery store owned by Hamal Dawoud Kouza, her 43-year-old cousin. She did not have a high school education. Hamal preyed upon her and forced her into sexual relations against her will. Hamal threatened her with death and threatened to reveal the secret to family members if she did not perform, or even if she tried to get married. He would not allow her to have any boyfriends. Police found Hamal's naked body in front of the television and sperm was recovered from the scene. Hamal died from a gunshot wound. Maha was convicted by a jury of second-degree murder and sentenced to 9 to 30 years. She served 12 years.

G. MEN WHO KILLED MEN

While women rarely kill other women (none were included in this study), the men who killed other men in the sample were given lighter sentences, even in clear cases of premeditation, than the women in the study. None of the men who killed other men were convicted of first-degree murder, which carries a mandatory life sentence; nor were any sentenced to life with the possibility of parole. Sentences of a term of years, even if lengthy, are preferable to a life sentence, with or without the possibility of parole. Several of these cases are listed here.

Barry Leigh Whittaker, Jr., 18, slapped a woman and Ronald Terry Woodal, 24, intervened on the woman's behalf. Whittaker stabbed and killed Woodal. Whittaker and Woodal were both black. Whittaker was charged as a habitual offender with open murder, to which he pled guilty. He received 7 to 15 years and was sentenced below the sentencing guidelines. He served nine years, re-offended in 2002, and returned to prison on a sentence of 4 to 15 years for assault with a dangerous weapon.

John Edward Benton stabbed and killed his victim, who lived in the same rooming house, after an altercation over a book of matches. Benton was charged with open murder as a second-time habitual offender and pled guilty to manslaughter. He was sentenced to 3 to 15 years and served five. Both men were black.

Michael West Eighmy, an 18-year-old white male, had a violent temper and was violent with his girlfriend. During a drunken rampage, he shot and killed his best friend, a white male, with a scope-equipped rifle. Eighmy was convicted by a jury of second-degree murder and was sentenced to 40 years. He served three years.

Robert Triplett was 20 years old when he had an altercation with Michael Payne, 16. After the altercation, Triplett returned, sought Payne

116. *Barker*, 468 N.W.2d at 85. Stacy Barker was ultimately granted a new trial through her federal appeal. On December 5, 2001, she pled guilty to Murder II and was sentenced to 21 to 70 years. She remains in prison.

out, and shot him. He was charged with open murder, convicted by a jury of second-degree murder, and sentenced to 15 to 30 years. Both men were black. He served 14 years.

H. MEN KILLING WOMEN RANDOMLY

Men who killed women randomly were sentenced more severely than those who killed female partners in the sample. For example, Tony Dale Marsh, a white, self-employed apprentice bricklayer with an extensive criminal record, raped, sodomized, and murdered Pamela Lamoreaux, leaving her naked body on the beach. Marsh apparently had seen Lamoreaux at a local bar. She was an upper-middle-class, white college student. In a highly publicized trial, Marsh was convicted of first-degree felony murder and sentenced to mandatory life. He remains in prison.

I. WOMEN CONVICTED FOR MURDER COMMITTED BY A BATTERER

In one case, Joe Bazzetta, a violent abuser, strangled his stepmother. His wife, Michelle, was not involved in the attack, but he forced her to help him clean up the crime, threatening to kill her if she did not do as she was told. All parties were white. A jury convicted Michelle of second-degree murder, and she was sentenced to life with the possibility of parole. An expert on domestic violence wrote a lengthy psychological report on Michelle Bazzetta in support of an unsuccessful appeal. Joe Bazzetta was found guilty of murder, but was found to be mentally ill. He received life with the possibility of parole.

J. EXCEPTIONS

Even though most women who kill do so in self-defense, and are convicted and serve long sentences, there are exceptions. In the sample, one female victim of domestic violence was acquitted, two battered women were sentenced within the state sentencing guidelines of their convictions to probation, one woman died before trial, and one woman killed her child and herself. All parties were black.

Mary Louveis Terry was charged with open murder and felony firearm for the shooting death of her abusive husband. She claimed self-defense. The deceased had previously beaten her and shot her when she was pregnant. In the incident at issue, the deceased threatened to kill the defendant, then handed her the gun and challenged her to use it. He then hit her in the face and came at her with a knife. She shot him. She was charged with open murder and felony firearm. A jury found that she was not guilty.

Diana Whitfield shot her abusive husband in the back. She claimed self-defense. Whitfield's husband was bending over to pick up a gun to use against her. She had suffered continuous beatings all day. She was charged with and pled guilty to manslaughter. She was sentenced within

the guidelines to five years probation.

Marshall Hiawatha Jones killed her abusive boyfriend, Peter Narciese, III. On the night of the offense, Narciese, in a drunken rage, threatened to kill, hit, and throw things at Jones. Jones was trying to get out of the house. She grabbed the gun to protect herself and shot her boyfriend in the chest. She was charged with open murder and convicted of manslaughter in a bench trial. She was sentenced to two years probation.

Only one victim of domestic violence had the charges against her dropped. They were dropped because she died of cancer. Ruth Norman was terminally ill with metastatic carcinoma of the stomach. Her abusive husband tried to pull out her catheter and she defended herself by stabbing him. He died two months later. She was charged with open murder but died before she went to trial.

The only woman who killed her child also killed herself with a massive drug overdose.

Cases involving the deaths of both the defendant and victim (two men who killed their female partners and then themselves, and the woman who killed her child and then herself) were not included in the study because there was no trial.

K. DISCUSSION

This study of the 82 homicide cases in Oakland County in 1986, 1987, and 1988, show that women defendants in these cases were convicted at a much higher rate than men (71.43 percent of women; 62.69 percent of men). Black women were convicted at an even higher rate than all others (80 percent of black women; 61.97 percent of all others), and women who were victims of domestic violence were also convicted at a higher rate (77.78 percent were convicted, compared to only 62.50 percent of all others).

The most startling result in the study is the discrimination in sentencing against victims of domestic violence, resulting, in part, because of their higher conviction rate. Overall, a white female defendant with no prior convictions convicted by a jury of killing a white person could expect an average sentence of 10 to 30 years. However, if that woman was a victim of domestic violence, her predicted sentence increased to life.

One would expect any difference in the conviction rates and sentencing to be insignificant because of the relatively small sample size, the high profile nature of homicide cases, the higher standard of proof required to convict in criminal cases, and the relative inflexibility in evidence and sentencing in homicide cases. However, the data shows that an important factor in determining whether a defendant was convicted of homicide was whether she or he was a victim of domestic violence.

Results of this study show unequivocally that victims of domestic violence in Oakland County during the three-year period under study

received higher conviction rates and longer sentences than all others charged with homicide, including those with previous violent criminal records. These findings correlate to Dr. Elizabeth Leonard's study of 42 women who killed their batterers in California where conviction rates were discovered to be higher and prison sentences longer than for other homicide defendants.¹¹⁷

VI. FAIR USE OF CLEMENCY FOR BATTERED WOMEN'S JUSTICE

Clemency is a power vested in every sovereign in the world and in the governors of every state in the United States.¹¹⁸ Types of clemency include amnesty, pardon, commutation, and reprieve.¹¹⁹ Granting clemency for battered women who killed abusers in self-defense is a legitimate use of a governor's power since it provides redress in cases where the defendants have been unjustly prosecuted, convicted, and/or sentenced.¹²⁰ Governors who exercise this power are not bound by the same rigid rules of evidence and procedure that govern the courts. In cases where inequities have resulted from gender, race, or sexual bias, such as in the case of battered women defendants, clemency is a necessary remedy to the denial of their equal rights to trial.¹²¹ Daniel Kobil, who has written extensively about the power of clemency, notes, "the clemency power, like talking, cannot be used judiciously by governors who do not 'keep in practice.'"¹²² Despite the politically explosive nature of the clemency power, it is an integral part of our system of justice, and hence governors should exercise the power in a fair and principled manner throughout their tenure in office.¹²³ Yet, owing to the potential repercussions for granting clemency, the temptation has been, and will continue to be, for governors to use the power infrequently, and in all likelihood, injudiciously.¹²⁴ It is important that the clemency power be exercised in an equitable, fair and expansive manner.

117. LEONARD, *supra* note 19, at 68-69.

118. Madden, *supra* note 32, at 51-52.

119. Amnesty is given in cases involving political prisoners or groups; a pardon sets aside or lessens a sentence, forgiving or altering consequences; commutation changes or reduces a sentence; and reprieve postpones an execution. *See generally* BLACK'S LAW DICTIONARY 83, 1137, 274, 1305 (7th ed. 1999).

120. SARA GERAGHTY, CLEMENCY FOR BATTERED WOMEN IN MICHIGAN: A MANUAL FOR ATTORNEYS, LAW STUDENTS AND SOCIAL WORKERS 12-15 (ACLU Michigan Battered Women's Clemency Project 1998).

121. SCHNEIDER, BATTERED WOMEN, *supra* note 25, at 145; Madden, *supra* note 32, at 1-2.

122. Daniel T. Kobil, *Do the Paperwork or Die: Clemency, Ohio Style?*, 52 OHIO ST. L.J. 655, 699 (1993).

123. Daniel T. Kobil, *How to Grant Clemency in Unforgiving Times*, 31 CAP. U. L. REV. 219, 239, 241 (2003).

124. Kobil, *supra* note 122, at 699.

As public understanding of issues such as domestic violence and discrimination evolve, clemency provides an indispensable remedy to secure justice for battered women who are serving sentences for crimes committed in an era when police were reluctant to arrest batterers, shelters were rare or nonexistent, and society widely blamed battered women for not leaving.¹²⁵

Until recently, evidence about domestic violence in cases where the defendants were victims of abuse was frequently not allowed at trial.¹²⁶ In those cases where evidence was presented, it was often raised ineffectively to establish self-defense, or negated due to either the judges' or juries' misapplication of the legal theory of self-defense with regard to battered women's experiences.¹²⁷

Historically, American jurisprudence has consistently disregarded the rights of victims of abuse.¹²⁸ Since the law has widely permitted, even codified, violence against women, judges and jurors often do not see it as a life threatening concern.¹²⁹ Trial judges essentially have the power to direct a verdict against a defendant by making decisions on the sufficiency of defense evidence or in their jury instructions.¹³⁰ Even if judges recognize the severity of the abuse, the female defendant is often faulted for taking the law into her own hands.¹³¹ Worse, the betrayal by law enforcement is disregarded, as are mitigating factors in battered women's cases.¹³² For example, the clear lack of criminal histories in most of these cases is ignored as are issues of duress or threat by an abuser if a battered woman commits a crime.¹³³ Further, while there are laws that increase sentences for egregious circumstances, such as when a defendant is a

125. See SCHNEIDER, *Battered Women*, *supra* note 25, at 145; see also *Presidential Pardons: Hearing Before the Subcomm. on the Constitution, Comm. on the Judiciary* (2001) (statement of Daniel Kobil, Professor of Law, Capital University Law School), available at http://judiciary.house.gov/judiciary/kobil_022801.htm.

126. In *People v. Wilson*, 487 N.W.2d 822, 824-25 (Mich. Ct. App. 1992), the Michigan Court of Appeals held that expert witnesses may testify about the "battered spouse syndrome" in support of a self-defense claim, but are limited to describing the syndrome, and to explaining how the behavior of the defendant is characteristic of battered women generally. For a discussion of the Michigan case, see Rodwan, *supra* note 76.

127. SCHNEIDER, *Battered Women*, *supra* note 25, at 113-21, 144-45. See generally Buel, *supra* note 80.

128. Buel, *supra* note 80, at 328.

129. English common law and the case law in many states in the United States recognized the right of men to control their wives through physical abuse until the late 19th century. Caroline Dettmer, *Increased Sentencing for Repeat Offenders of Domestic Violence in Ohio: Will This End the Suffering?*, 73 U. CIN. L. REV. 705, 709-10 (2004). Michigan passed a law prohibiting marital rape only as recently as 1988. MICH. COMP. LAWS ANN. § 750.520 (effective June 1988).

130. Maguigan, *supra* note 36, at 439-40.

131. See SCHNEIDER, *Battered Women*, *supra* note 25, at 6.

132. GILLESPIE, *supra* note 7, at 11-12; SCHNEIDER, *Battered Women*, *supra* note 25, at 229-32; Buel, *supra* note 80, at 224, 231.

133. Buel, *supra* note 80, at 234-35, 254-56, 265.

habitual offender, or when a murder is committed in the course of the commission of a felony, laws do not sufficiently reduce sentences in cases involving special circumstances, such as those of battered women.¹³⁴ Compounding this crisis is the ineffective legal counsel representing battered women in the courts.¹³⁵ As a result, national studies indicate that between 75 percent and 82 percent of battered women charged with killing their abusers are convicted or accept a guilty plea.¹³⁶ Maguigan's study showed that jurors only understood the significance of the defendant's evidence and the social context of a battered woman when a judge spelled it out for them and instructed them to consider these issues.¹³⁷ In many cases, women report being pressured by prosecutors and their own defense attorneys to forgo a trial and plea bargain, even when they were wrongly arrested.¹³⁸

Higher conviction rates and longer sentences further add to the injustice for victims of domestic violence who are convicted of murder. The Michigan Parole Board's practice of denying parole to thousands of eligible prisoners during the past decade, despite recommendations from judges, police, the United Nations, and others, means that many of these women received the equivalent of life without parole.¹³⁹

Clemency is an imperfect tool for dealing with women who killed their abusers since many of the women should never have been prosecuted or sentenced to prison in the first place. Commuting the sentence of a woman who killed in self-defense does not change the systems that failed to protect her, nor the courts that failed to provide a fair trial. However, since parole boards refuse to consider these cases at all, or, at best, tend to reenact the criminal trials and ignore the abuse, clemency is often the only available tool to rectify the failures of the criminal justice system.¹⁴⁰

134. Buel, *supra* note 80 at 255.

135. See generally Buel, *supra* note 80.

136. Sue Osthoff, *Making a Difference: Advocating Effectively for Women Who Kill*, PCADV NEWSL. (Pa. Coal. Against Domestic Violence, Harrisburg, Pa.), May 1990, at 2.

137. Maguigan, *supra* note 36, at 439.

138. Susan L. Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 VIOLENCE AGAINST WOMEN 1339, 1360-63 (2001).

139. Only three battered women prisoners who killed their abusers and who were represented by the Michigan Battered Women's Clemency Project have been released on parole since the Project was founded in 1991. For two of these women, petitions filed by the Clemency Project were sitting on the governor's desk at the time of parole, and, according to the office of the legal counsel for the governor, provided support for their parole. For the third woman, her parole followed a few months after her petition was denied. Geraldine Gordon was paroled in 1998, after serving more than 13 years of an 18- to 35-year sentence. Renee Adams was paroled in 2004, after serving 14 years of a 16- to 30-year sentence. Diane Howe was paroled in 2006, after serving 16 years of a 17- to 30-year sentence. Since 1990, the average time served by an inmate sentenced to parolable life was 19.1 years.

140. In 1992, Michigan Governor John Engler ordered an overhaul of the State Parole Board and the way in which paroles were granted. The intent of the overhaul was to

The actual number of women serving time for killing in self-defense against a batterer is unknown.¹⁴¹ Leonard estimates it may be as high as 4,500.¹⁴² According to the National Clearinghouse for the Defense of Battered Women, at least 124 battered women from 23 states have received clemency since 1978, most of them since 1990.¹⁴³ In 1990, Governor Richard F. Celeste of Ohio released 25 women.¹⁴⁴ In 1991, Governor William Schaefer of Maryland released eight women, and between 1993 and 1994, Governor William Weld of Massachusetts released four.¹⁴⁵ Between 1993 and 1995, Governor Lawton Chiles of Florida commuted the sentences of eight women.¹⁴⁶ From 1994 to 1997, Governor Jim Edgar of Illinois granted clemency to seven women.¹⁴⁷ In 1996, on his last day in office, Governor Brereton Jones of Kentucky commuted the sentences of nine battered women.¹⁴⁸ In 1998, as he was leaving office, Governor Roy Romer of Colorado commuted the sentences of four women.¹⁴⁹ Most, if not all, of these commutations were prompted by the efforts of organized clemency groups.¹⁵⁰ Their success depended on the willingness of authorities to acknowledge and to act on the injustice despite the political risk.¹⁵¹ In some cases, governors such as Arnold Schwarzenegger of California have helped to speed up the parole process for battered women and/or signed bills to allow battered women inmates to challenge their sentences.¹⁵² Although clemency, commutations, and pardons have been granted to battered women in a number of states, the majority continue to serve long prison sentences.¹⁵³

VII. CASE STUDY

In one case from the present study, the defendant, Karen Kantzler, was tried in 1988 and convicted of second-degree murder and felony firearm for

make Michigan's communities safer by making more criminals serve more time and keeping many more locked up for as long as possible. MICH. DEP'T OF CORRECTIONS, FIVE YEARS AFTER: AN ANALYSIS OF THE MICHIGAN PAROLE BOARD SINCE 1992 at 2 (1997).

141. LEONARD, *supra* note 19, at 37.

142. *Id.*

143. NAT'L CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, BATTERED WOMEN WHO HAVE RECEIVED CLEMENCY (2002) (discussing how some governors or parole boards have quietly granted paroles to battered women prisoners).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. GAGNE, *supra* note 57, at 158-67.

151. *Id.*

152. Jordan Rau, *Battered Women's Law Okd*, L.A. TIMES, Sept. 18, 2004, at B1; Rose Aguilar, *Abused Woman's Freedom Could Herald New Era*, BAY AREA BUSINESS WOMAN, Oct. 2004, available at <http://babwnews.com/article.php?id=132>.

153. LEONARD, *supra* note 19, at 28.

the shooting death of her abusive husband, Paul Kantzler.¹⁵⁴ Karen Kantzler met Paul during his internship as a medical student at Henry Ford Hospital where Karen also worked as a radiology technician.¹⁵⁵ Throughout their four-year marriage, Paul Kantzler used his physical stature to exert brutal dominance and control over Karen. He was a large, athletic man, measuring at six-foot-three and weighing approximately 250 pounds.¹⁵⁶ While a medical intern, Paul worked at nightclubs as a bouncer, earned a black belt in karate and studied judo.¹⁵⁷ Paul continued to work as a bouncer and continued to box, even after becoming a medical doctor.¹⁵⁸ He owned guns: two handguns, four shotguns, and ten rifles.¹⁵⁹ Paul used the guns on hunting trips and at the shooting range, and kept ammunition all over the house.¹⁶⁰ When he was depressed, he often shot squirrels and birds in the back yard.¹⁶¹

Paul threatened to kill Karen on numerous occasions, and bragged about beating up various people, some of whom were hospitalized for their injuries.¹⁶² Once, he openly bragged that he could kill all the people at a party with his bare hands.¹⁶³ In 1980, Paul was sued for severely beating and injuring a man.¹⁶⁴ A family friend testified at Karen's trial that Paul's father admitted to him that Paul was an aggressive child and that the father believed Paul had a personality disorder.¹⁶⁵ At home, on one occasion, Paul flew into a rage and threw Karen across the room.¹⁶⁶ After she hit a piece of furniture upon landing, he grabbed her by the throat and sweater and bashed her head against the floor.¹⁶⁷ On another occasion, he threw her onto the concrete floor so hard she suffered bruises on her back and buttocks and missed time from work.¹⁶⁸ Once, when Karen was struggling to lift a garbage bin in the driveway, he attacked and beat her because she seemed weak.¹⁶⁹ At various times, he pointed guns at her; and at other times, he held a switchblade to her, snapping it out to make her jump

154. Offender Tracking Information System, Offender Profile: Karen Ann Kantzler, <http://www.state.mi.us/mdoc/asp/otis2profile.asp?mdocNumber=192343> (last visited Oct. 22, 2006).

155. Transcript of Jury Trial at vol. 3, p. 168, vol. 5, pp. 26, 88, *People v. Kantzler*, No. 87-78545-FC (Mich. 6th Jud. Cir. Ct. 1988).

156. *Id.* at vol. 2, pp. 170-71, vol. 3, pp. 117, 119, 172.

157. *Id.* at vol. 3, pp. 177, 181-83.

158. *Id.* at vol. 3, p. 183.

159. *Id.* at vol. 3, p. 53, vol. 5, p. 94.

160. *Id.* at vol. 3, pp. 49-51, 55.

161. *Id.* at vol. 5, p. 95.

162. *Id.* at vol. 5, pp. 78, 96, 98.

163. *Id.* at vol. 4, pp. 49-50.

164. *Id.* at vol. 4, pp. 89-90.

165. *Id.* at vol. 4, p. 72.

166. *Id.* at vol. 5, p. 106.

167. *Id.*

168. *Id.* at vol. 5, p. 108.

169. *Id.*

back.¹⁷⁰ Karen suffered from a condition called Benign Femial Tremors, an illness for which her husband would not allow her to receive medical treatment.¹⁷¹ She also suffered two miscarriages during the marriage.¹⁷² Karen sought help from many sources to no avail. Her doctors saw bruises on her body on several occasions and noted that she was distraught and depressed.¹⁷³ Karen went to a divorce attorney, who also saw the bruises and was concerned for Karen's safety.¹⁷⁴ However, since Karen had no money of her own, she could not file for a divorce.¹⁷⁵ She asked her husband to go to marriage counseling, but he refused to go and became enraged.¹⁷⁶ She missed work at times because her face was red and swollen, and because of other injuries.¹⁷⁷ She called Common Ground Crisis Center in Birmingham for guidance at least twice.¹⁷⁸ One call-report reads in part:

Karen had called this afternoon (see attached write-up). She was quite upset and cried frequently. She repeated what she had said in the call this afternoon, also related physical abuse, also that this is not the first time he has threatened to kill her, but this is different because this time she thinks he might. And he would be well able due to his size, skill and guns.¹⁷⁹

Although Karen considered obtaining an injunction to prevent the physical abuse, she decided against it because Paul had warned her that if she ever told anyone that he laid a hand on her, he would kill her.¹⁸⁰ When asked why she never called the police after a beating, she replied, "Because I was afraid that Paul would kill me."¹⁸¹ Although she was married to a doctor who earned more than \$100,000 a year, Karen had no control over or access to any money he earned.¹⁸² He controlled all of their income and assets.¹⁸³ He took the proceeds she had brought into the marriage from a condominium, a car, and a pension from Henry Ford Hospital.¹⁸⁴

On March 11, 1987, Paul Kantzler was found dead at the family home

170. Transcript of Jury Trial, *supra* note 155, at vol. 5, p. 98.

171. *Id.* at vol. 5, pp. 6, 9-12, 14, 16, 18.

172. *Id.* at vol. 5, p. 102.

173. *Id.* at vol. 6, p. 54.

174. *Id.* at vol. 5, pp. 32-33.

175. *Id.* at vol. 5, p. 52.

176. *Id.* at vol. 5, p. 100.

177. *Id.* at vol. 5, p. 110.

178. *Id.* at vol. 5, pp. 74, 78.

179. *Id.* at vol. 5, p. 78.

180. *Id.* at vol. 5, pp. 101-02.

181. *Id.* at vol. 5, p. 102.

182. *Id.* at vol. 5, pp. 24, 38-39.

183. *Id.* at vol. 5, p. 24.

184. *Id.* at vol. 3, p. 148, vol. 5, pp. 29, 74, 79, 91-92, vol. 6, p. 14.

in West Bloomfield, Michigan, as a result of a gunshot wound to the left side of his head, just behind his ear.¹⁸⁵ As officers from the West Bloomfield Police Department pulled up to the house, Karen was sobbing at the front door.¹⁸⁶ She initially told officers that her husband had shot himself.¹⁸⁷

Earlier that evening, an argument had erupted between Paul and Karen after they both had some drinks before and during dinner at a nearby restaurant.¹⁸⁸ Paul consumed three glasses of vodka and three beers before dinner and a carafe of wine at dinner.¹⁸⁹ At home, he told her she had ruined his life because she couldn't have his children, that she was worth nothing, and accused her of running up his charge cards.¹⁹⁰ About 20 minutes after he went to bed, he ordered her to come to bed.¹⁹¹ As she entered the bedroom, she saw that he had a "funny" look on his face and was holding a gun.¹⁹² He pulled her into the room and pushed her against the closet doors.¹⁹³ He held the gun to her neck and threatened to kill her.¹⁹⁴ She pushed him away as hard as she could, and as he fell backwards she tried to get the gun.¹⁹⁵ They fought over it and Karen heard it go off.¹⁹⁶ She called a friend who came over and called the police.¹⁹⁷

The prosecutor claimed that the murder was premeditated, that the motive was a \$100,000 life insurance policy, and that Karen feared her husband was going to divorce her.¹⁹⁸ She was tried and convicted of second-degree murder.¹⁹⁹ The judge expressed sympathy for Karen, stating that there was evidence of spousal abuse.²⁰⁰ However, he did not acknowledge the complete failure of the criminal justice system to protect her, and instead revealed his bias toward a survivor of domestic violence:

Considering everything I have said, my sympathy and sympathy for the family, for the victim and considering what I believe is genuine remorse on your part, I must tell you that the proper option

185. Transcript of Jury Trial, *supra* note 155, at vol. 2, pp. 155, 163, 165-66, 188, vol. 6, p. 14.

186. *Id.* at vol. 1, pp. 6, 49, vol. 2, pp. 7-9, 104-06, 134, 136, 141.

187. *Id.* at vol. 1, pp. 51, 56, 62, vol. 2, pp. 105, 136, vol. 3, p. 67, vol. 5, p. 140, vol. 6, pp. 33-34.

188. *Id.* at vol. 2, pp. 112, 142, vol. 5, pp. 111, 113, 121, 124, 128.

189. *Id.* at vol. 3, pp. 31, 123, vol. 4, pp. 22-23, 26, vol. 5, pp. 118, 121, 123-24.

190. *Id.* at vol. 5, p. 127.

191. *Id.* at vol. 5, p. 131.

192. *Id.* at vol. 5, p. 134.

193. *Id.*

194. *Id.* at vol. 5, pp. 134-35.

195. *Id.* at vol. 5, pp. 135-36.

196. *Id.* at vol. 5, p. 136.

197. *Id.* at vol. 3, pp. 201-02.

198. *Id.* at vol. 2, pp. 90-99.

199. *Id.* at vol. 7, p. 4.

200. *Id.* at vol. 8, p. 18.

in the situation that you found yourself in would have been to seek a separation or a divorce.²⁰¹

Following her conviction for second-degree murder, and her 1988 sentence of life with the possibility of parole, Karen Kantzler filed a Motion for Modification of Judgment of Sentence in 1993.²⁰² Among other things, she claimed that the sentence was invalid as Judge Norman L. Lippitt had misunderstood its implications, and that the sentence was disproportionate to the circumstances of the offense.²⁰³ Judge Lippitt himself submitted an affidavit, acknowledging his error.²⁰⁴ In his affidavit, he states:

I continue to believe that Karen Kantzler was not well represented at trial, and she was a victim of spouse abuse . . . at the time of sentence, I was not aware of statistics in the State of Michigan, but have been subsequently informed, that in the year 1985, there was only a total of 9 prisoners serving life sentences for crimes other than first degree murder, or major controlled substance offenses, who were released on parole, and that none of them were released on parole prior to 20 years. Further, I have been informed that during the same year there were between 700 and 1,000 inmates serving similar life sentences who were not paroled within 20 years.²⁰⁵

Recognizing that the trial judge had imposed the sentence in error due to a misunderstanding of the legal ramification of a life sentence and implementation of the parole statutes and the changing Department of Corrections policy regarding parole, the successor judge, Barry L. Howard, modified Karen Kantzler's sentence from life to a term of years — 3 to 10 years — for second-degree murder, with credit for 1,028 days served.²⁰⁶ However, the prosecutor appealed, and the Michigan Court of Appeals vacated the new sentence.²⁰⁷ Despite the fact that two trial court judges heard the details of the crime, observed Ms. Kantzler, and decided that a life sentence was not appropriate, the sentence was upheld.²⁰⁸

201. Transcript of Jury Trial, *supra* note 155, at vol. 8, pp. 18-19.

202. Transcript of Court's Opinion and Sentencing at 5-6, *People v. Kantzler*, No. 87-7878545-FC (Mich. 6th Cir. Ct. 1993).

203. *Id.*

204. Affidavit of Normal L. Lippitt at 1-2, *People v. Kantzler*, No. 87-78545-FC (Mich. 6th Cir. Ct. 1993).

205. *Id.* at 2.

206. Order for Modification of Judgment of Sentence, *People v. Kantzler*, No. 87-78545-FC (Mich. 6th Cir. Ct. 1993).

207. *People v. Kantzler*, No. 168480 (Mich. Ct. App.), *leave to appeal denied*, 541 N.W.2d 566 (Mich. 1995).

208. *Id.*

Both judges have written letters and/or affidavits in support of clemency for Karen Kantzler.²⁰⁹ In a December 15, 2003, letter to Governor Granholm, supporting the second petition for Karen Kantzler submitted by the Michigan Battered Women's Clemency Project, (former) Judge Lippitt wrote:

Karen Kantzler was a battered woman. Her husband had a long history of both physical and mental abuse directed toward her. I sentenced her to life imprisonment for her conviction of second degree murder. When I sentenced her, as supported by affidavits I have already filed in the matter, I was under the mistaken impression that she would be eligible for parole in 10 years. I later learned that, as a practical matter, her parole after 10 years, or anything close to 10 years, was not possible. That was a serious and tragic error on my part.²¹⁰

Given that Karen Kantzler bears permanent and debilitating injuries from the years of beatings at the hands of her husband, and that this was a case of self-defense in a struggle over the batterer's gun, the most "tragic error" was that she was prosecuted at all. The purposeful discrimination against Karen Kantzler and an entire class of persons in the Oakland County courts constitutes a deprivation of equal protection under the law, excessive punishment, and denial of due process.²¹¹

Both the Michigan and the United States Constitutions grant to their citizens the right to equal protection under the law and guarantees of substantive due process.²¹² The statistics, however, show a "disparate impact" of sentencing practices. In *People v. Kantzler*, the statistical evidence, coupled with evidence of discrimination and admitted error by the trial judge, establishes violations of equal protection and due process laws as required in *McCleskey v. Kemp*. Nevertheless, a 2003 Motion for Relief from Judgment filed by the Michigan Battered Women's Clemency Project on behalf of Karen Kantzler was denied by presiding judge, John J. McDonald.²¹³ His Opinion states:

209. Letter from Norman L. Lippitt, Judge of the 6th Circuit of the State of Michigan, to Jennifer M. Granholm, Governor of the State of Michigan (Dec. 15, 2003) (on file with author); Letter from Norman L. Lippitt, Judge of the 6th Circuit of the State of Michigan, to John Engler, Governor of the State of Michigan (Sept. 9, 1996) (on file with author); Letter from Barry L. Howard, Judge of the 6th Circuit of the State of Michigan, to Michigan Parole Board (Nov. 22, 1995) (on file with author).

210. Letter from Norman L. Lippitt, Judge of the 6th Circuit of the State of Michigan, to Jennifer M. Granholm, Governor of the State of Michigan (Dec. 15, 2003) (on file with author).

211. See U.S. CONST. amend. V, XIV, § 1; MICH. CONST. art. I, §§ 2, 17.

212. U.S. CONST. amend. V, VI & XIV; MICH. CONST. art. I, §§ 3, 17.

213. Opinion and Order at 5, *People v. Kantzler*, No. 87-78545-FC (Mich. 6th Cir. Ct. 2003).

While Defendant has listed several statistical facts in support of her equal protection and due process argument, Defendant has not demonstrated that, but for the alleged errors, the jury would have rendered a different result.²¹⁴

On the statistical evidence of bias in conviction and sentencing in Oakland County, the Court in *Kantzler* found "no jurisdictional defect."²¹⁵ Karen Kantzler remains in prison serving a life sentence.

VIII. CONCLUSION

No batterer acts alone. Violence against women is facilitated by gender- and race-based inequalities in our social and political systems, structures that perpetuate the denial of abuse, blaming women for batterers' acts, and socio-economic barriers to women's independence.²¹⁶ These interlocking structures connect domestic violence to imprisonment through unequal treatment by the law and gendered modes of punishment.²¹⁷ Like Karen Kantzler, Stacy Barker, and others in this study, as well as those in the Michigan Battered Women's Clemency Project, many women should not have been charged at all or should have succeeded with their claims of self-defense at trial. For others, the punishment was far too severe, given the circumstances of their cases. The consequences were also unjust to their minor children who were placed in foster care or shuttled from relative to relative. Courts, laws, and law enforcement have all been unwilling to acknowledge that their failure to protect battered women results in women being killed or being forced to kill.²¹⁸ Instead, women are

214. Opinion and Order, *supra* note 213.

215. *Id.*

216. See SCHNEIDER, BATTERED WOMEN, *supra*, note 25, at 12.

217. Angela Y. Davis, *Public Imprisonment and Private Violence: Reflections on the Hidden Punishment of Women*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 339 (1998).

218. In the 26 cases represented by the Michigan Battered Women's Clemency Project in court and/or through clemency petitions to the Governor since 1991, some evidence of violence and abuse suffered by these women was presented in only seven cases. In one of those cases, a judge told the woman she could not be a battered woman because she held a job. In another, evidence of sexual abuse apparently did not register as battering with the judge or jury. In a third, the judge acknowledged the abuse, but decided that the killing was "premeditated" because the woman had time to protect her child by moving him out of harm's way during her husband's rampage, before she shot him in defense of her child and herself. In another case, a 19-year-old woman had been a virtual sex slave in her home since she was brought to the United States on an arranged marriage. She spoke very little English, yet the judge declared as he sentenced her in 2000, "Certainly everybody in America is aware of womens [sic] group shelters and other places that they can go for assistance when they believe they are being subjected to domestic violence, physical and otherwise." In Karen Kantzler's case, the judge admonished her at sentencing for not seeking a divorce, then admitted years later that he made a "serious and tragic error" in sentencing her to life. Seven of the 26 women pled to second-degree murder, and all of those except one received sentences at the top of, or over, the guidelines. Sixteen received

told to take responsibility for their own abuse.

This study of Oakland County's homicide cases demonstrates that a defendant charged with open murder during the late 1980s could expect to be convicted 62 percent of the time and, if convicted, could expect to receive a sentence of 10 to 15 years. Yet, for battered women, the conviction rate jumped to 77 percent. For a white woman, like Karen Kantzler, with no prior convictions who killed a white person, the conviction rate was 97 percent and the predicted sentence increased to life. For many battered women, a life sentence means dying in prison.²¹⁹

The 1990s' legacy of political opportunism, get-tough-on-crime, and the war on drugs produced a spending binge that bloated the prison industry and increased sentencing practices out of all proportion in the United States. Michigan's 2004 budget allotted the highest proportion (20.1 percent) of its state general fund to corrections of any state in the nation.²²⁰ Michigan and other states cannot afford, and justice will not be served by, the continued imprisonment of women who act in self-defense against abusers.²²¹ These women have been victimized not only by their partners within the "privacy" of the nuclear family structure, but more egregiously by a government that failed to protect them, overcharged them when they protected themselves, refused their equal right to a fair trial and sentencing, and finally, incarcerated them in a gendered system that has denied them some of their most basic human rights. Clemency remains their only hope for justice.

life. All but three were convicted before Michigan law changed to allow expert testimony on battered women's experiences at trial.

219. Adam Liptak, *To More Inmates, Life Term Means Dying Behind Bars*, N.Y. TIMES, Oct. 2 2005, at 2. Since the founding of the Michigan Battered Women's Clemency Project in 1991, three petitioners and several on the waiting list have died, including one who committed suicide after serving over 25 years.

220. NAT'L ASS'N OF STATE BUDGET OFFICERS, 2004 STATE EXPENDITURE REPORT 60 (2005), <http://www.nasbo.org/Publications/PDFs/2004ExpendReport.pdf>.

221. Michigan spends more than \$30,000 per year per prisoner at levels IV, V, and VI. The release of 100 battered women could save the state approximately \$3 million per year. See MICH. DEP'T OF CORRECTIONS, 2004 ANNUAL REPORT (2004), http://www.michigan.gov/documents/2004_Annual_Report_147719_7.pdf.

Figure 1.

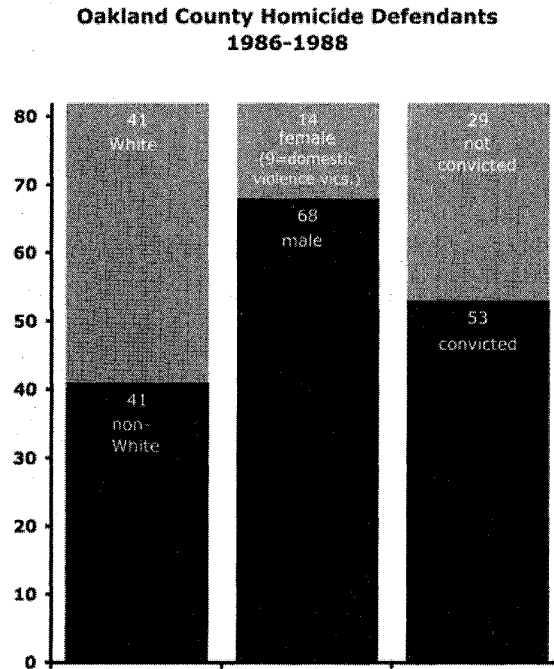


Figure 2.

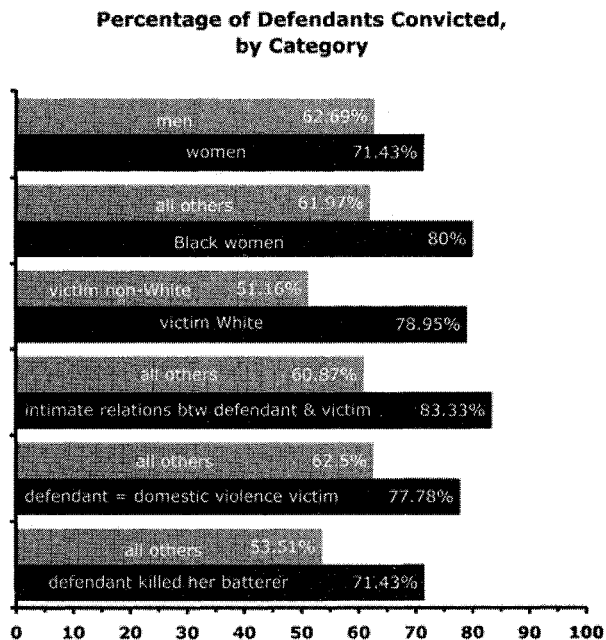


Figure 3.

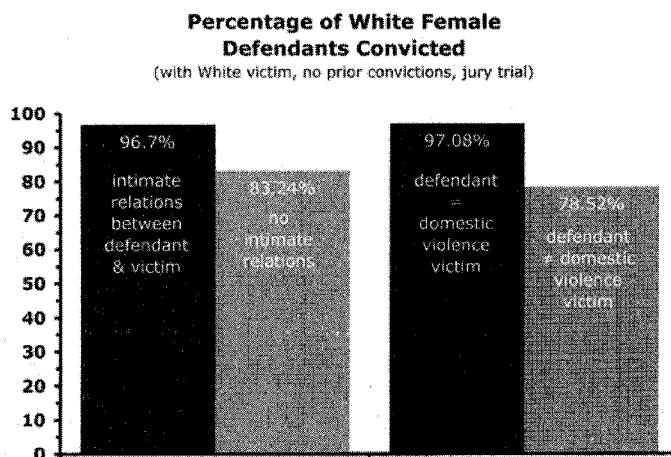


Figure 4.

